

HEALTH AND SENIOR SERVICES

THE COMMISSIONER

Smoke-Free Air Rules

Proposed New Rules: N.J.A.C. 8:6

Authorized By: _____

Fred M. Jacobs, M.D., J.D., Commissioner, Department of Health
and Senior Services.

Authority: N.J.S.A. 26:1A-15 and 16 through 19, and 26:3D-55 et seq.,
particularly 26:3D-64.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2006-_____.

A public hearing on the proposed new rules will be held at 10:00
a.m. on Friday, June 2, 2006 at the following location:

Suburban Square Shopping Center
25 Scotch Road, Conference Room C (Basement)
Ewing, NJ 08628

Entrance and parking are in rear of shopping center, except for
handicapped access and parking, which are available at the front
entrance.

Persons wishing to comment on the proposal at the public hearing
who wish to be placed on the list of speakers are requested to telephone

Ms Davis at (609) 292-9382 by Monday, May 29, 2006, and to bring an extra written copy of their remarks for submission to the public record.

Submit written comments by July 14, 2006 to:

Geneviève Raganelli, Regulatory Officer

Office of Legal and Regulatory Affairs

Office of the Commissioner

New Jersey Department of Health and Senior Services

P O Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

On January 15, 2006, former Governor Codey approved P. L. 2005, c. 383, the “New Jersey Smoke-Free Air Act” (Act), codified at N.J.S.A. 26:3D-55 et seq., to take effect April 15, 2006. See P. L. 2005, c. 383, § 12 (“This act shall take effect on the 90th day after enactment.”).

N.J.S.A. 26:3D-64 directs the Commissioner of Health and Senior Services to promulgate rules to implement the Act. The proposed new rules would fulfill this requirement. Following is a summary of the proposed new rules.

Proposed new subchapter 1 would contain general provisions.

Proposed new N.J.A.C. 8:6-1.1 would articulate the purpose of the

chapter, that is, to implement the Act. Proposed new N.J.A.C. 8:6-1.2 would establish definitions of words and terms used in the chapter.

Proposed new N.J.A.C. 8:6-1.2(a) would identify the following words and terms that are defined in the Act and used in the chapter: “bar,” “casino,” “casino simulcasting facility,” “cigar bar,” “cigar lounge,” “Indoor public place,” “person having control of an indoor public place,” “smoking,” “tobacco retail establishment,” and “workplace.”

Proposed new N.J.A.C. 8:6-1.2(b) would define the following words and terms used in the chapter to implement the Act: “backstream,” “Commission,” “Department,” “establishment,” “exterior area,” “evenly distributed,” “generally accessible to the public,” “incidental,” “Indoor Environments Program,” “local board of health,” “local health agency,” “New Jersey design professional,” “New Jersey licensed certified public accountant,” “not structurally enclosed,” “opening,” “person having control of an establishment,” “school,” and “tobacco product.”

The terms “indoor public place” and “workplace” are defined in the Act at N.J.S.A. 26:3D-57. The Department proposes to define the term “establishment” at proposed N.J.A.C. 8:6-1.2(b) for use as a generic term for a location or a place that is potentially subject to the prohibition against smoking. The definition would generally track the terminology used in the definition of “indoor public place” in the Act, except that it would leave out the qualifying requirements that the establishment be “structurally enclosed” and “generally accessible to the public.”

Likewise, the Department proposes to define “person having control of an establishment” as meaning the owner or operator thereof, in a manner that would generally track the Act’s definition of “person having control of an indoor public place or workplace” at N.J.S.A. 26:3D-57. Whether smoking is prohibited in an establishment under the Act depends on whether it is structurally enclosed and either generally accessible to the public or a workplace.

The proposed definition of “generally accessible to the public” would address the inquiries the Department has received as to whether establishments owned or operated by social or fraternal organizations are exempt from the Act. As introduced, the bill that ultimately was enacted as the Act would have provided a two-year exemption to these establishments during use by members, families, and their guests, provided all operational duties with respect to the organization were performed by members of the organization without compensation. Senate, No. 1926, 211th Legislature, as introduced, at §§ 6 and 13 (October 14, 2004); see also Assembly, No. 3730, 211th Legislature, as introduced, at §§ 6 and 13 (January 13, 2005). Both the Senate Health, Human Services and Senior Citizens Committee and the Assembly Health and Human Services Committee released the bill with amendments that deleted the exemption for these establishments. Senate, No. 1926, 211th Legislature, as reported by the Senate Health, Human Services and Senior Citizens Committee (March 14, 2005); Senate Health, Human

Services and Senior Citizens Committee Statement to Senate, No. 1926 (Second Reprint), 211th Legislature (March 14, 2005); Assembly, No. 3730 (First Reprint), as reported by the Assembly Health and Human Services Committee (January 5, 2006); Assembly Health and Human Services Committee Statement to Assembly, No. 3730 (First Reprint), 211th Legislature (January 5, 2006); Assembly Health and Human Services Committee Statement to Senate, No. 1926 (Second Reprint), 211th Legislature (January 5, 2006).

Thus, the Legislature specifically considered and rejected the opportunity to make the Act's prohibition against smoking inapplicable to (1) places open only to members and their families and guests, and (2) places where all work is performed on a volunteer basis. From the Legislature's refusal to exempt these establishments, the Department can reasonably infer that the fact that only members would have access to an establishment is not relevant to whether an establishment is an indoor public place. Likewise, the Department can infer that the fact that work is uncompensated is irrelevant to whether an establishment is a workplace.

Therefore, the Department proposes to define "generally accessible to the public," when used to describe an establishment, to mean (1) that persons other than persons having control of an establishment are permitted or required to enter the establishment for any purpose, regardless of whether the entry is occasional or routine, or (2) that persons other than persons having control of an establishment perform a

service or labor at the establishment, regardless of whether the service or labor is performed for profit or remuneration or on a nonprofit or volunteer basis, and regardless of whether the service or labor is performed occasionally or routinely. By including establishments at which a service or labor is performed routinely or occasionally, the Department intends the definition of “generally accessible to the public” to capture the routine or occasional entry into an establishment by workers such as health inspectors and utility meter readers, whose workplaces are necessarily others’ establishments.

Therefore, the members of a fraternal or social organization would have to be “persons having control of an establishment”; that is, the members, and not the organization itself, would have to be the owners or operators of the establishment for the establishment to be exempt. In addition, no persons other than the member owners or operators could enter the establishment, either routinely or occasionally. This would exclude family, guests, persons entering for events such as bingo and fundraisers and persons renting the establishment or a portion thereof. Finally, the establishment could not be a workplace at which persons other than member owners or operators perform service or labor, such as cooks, bartenders, janitorial personnel, health inspectors and utility meter readers, regardless of whether the service or labor is performed for compensation. Thus, if the only persons that would ever enter the

establishment are members who are owners or operators, then the establishment would be exempt from the Act.

Proposed new subchapter 2 would address applications of the terms “indoor public place” and “workplace.”

Proposed new N.J.A.C. 8:6-2.1(a) would articulate the general rule that the Act and the proposed new rules at N.J.A.C. 8:6 apply to establishments that are indoor public places and/or workplaces, except as otherwise provided in the Act or the proposed new rules.

Proposed new N.J.A.C. 8:6-2.1(b) would articulate that an establishment is an indoor public place if it is structurally enclosed and generally accessible to the public. This is consistent with the definition of “indoor public place” in the Act at N.J.S.A. 26:3D-57. The Act provides a non-exclusive list of examples of indoor public places.

Proposed new N.J.A.C. 8:6-2.1(c) would articulate that the proposed new rules at N.J.A.C. 8:6 are not to be construed to limit the ability of an owner or operator of an establishment to provide restrictions on or prohibitions against smoking that are more stringent than those provided in the Act or the chapter.

Proposed new N.J.A.C. 8:6-2.2(a) would establish that the time at which workers and members of the public would be present at an establishment is irrelevant in determining whether an establishment is an indoor public place or workplace at which smoking is prohibited. If smoking were permissible during periods when workers and members of

the public were not present, workers and members of the public later entering such an establishment would be exposed to lingering secondhand smoke. Likewise, proposed N.J.A.C. 8:6-2.2(b) would establish the irrelevance of the fact that smoking would occur at an establishment when it is occasionally or seasonally not structurally enclosed in determining whether the establishment is an indoor public place or workplace at which smoking is prohibited. If the establishment is occasionally or seasonally used as a workplace or generally accessible to the public when it is structurally enclosed, smoking is prohibited therein, to protect workers and the public from exposure to lingering secondhand smoke. The Department provides two examples at proposed new N.J.A.C. 8:6-2.2 to illustrate these provisions.

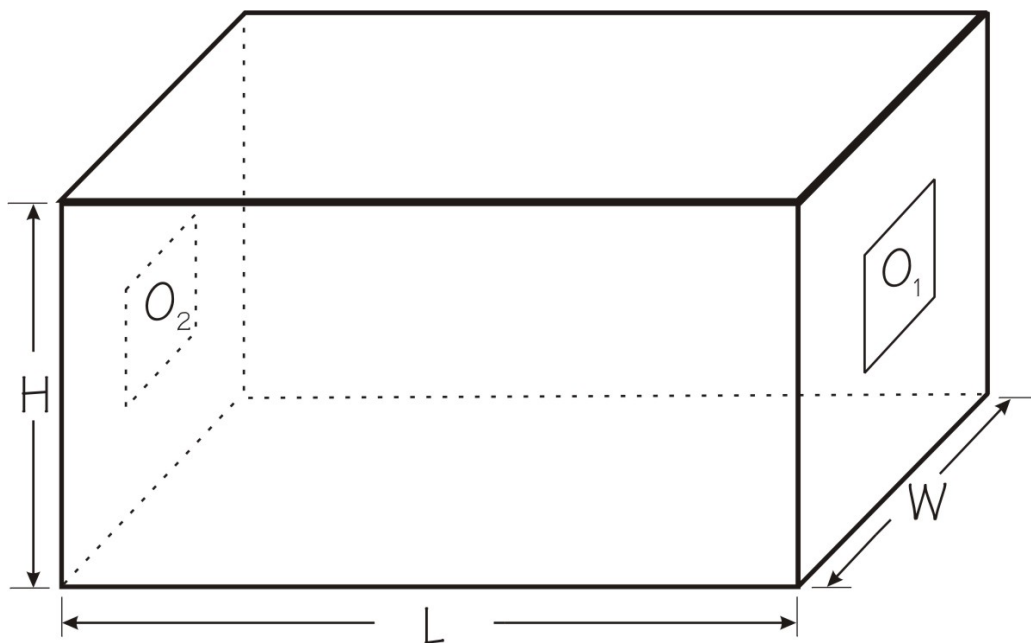
Proposed new N.J.A.C. 8:6-1.2 would define “opening” to mean a door, a window, a louver, a skylight, a food or beverage pass-through, or any aperture that allows the exchange of air between a building interior and the outside atmosphere. The definition would establish that whether an area is an “opening” would depend on whether airflow is obstructed, and would provide that screen material would not be viewed as obstructing airflow; however, storm windows, glass, wood, awning material, tent material, and plastic or polyethylene sheeting commonly referred to by the commercial name “Visqueen” would be viewed as obstructing airflow, and therefore, areas consisting of these latter materials would not be viewed as openings.

Proposed new N.J.A.C. 8:6-1.2 would define “exterior areas” as areas that are not structurally enclosed, and would provide a non-exclusive list of examples of areas that have the potential to be exterior areas, depending on whether they are structurally enclosed, including balconies, courtyards, decks, gazebos, parking lots, patios, porches, sidewalks, terraces, or yards.

Proposed new N.J.A.C. 8:6-1.2 would define “not structurally enclosed” to mean areas that have openings, defined as described above, that are evenly distributed on at least two sides or on one side and overhead, provided the total area of the openings is at least 40 percent of the total perimeter wall area.

Proposed new N.J.A.C. 8:6-1.2 would define “evenly distributed,” when applied to an opening to be used to qualify a space as “not structurally enclosed,” to mean that the area of the smallest opening is not less than 20 percent of the total area needed to qualify a space as not structurally enclosed. The requirement of even distribution of openings would ensure adequate cross-ventilation.

The following diagram would illustrate the formula established by these definitions and proposed new N.J.A.C. 8:6-2.3.



1. Assuming all angles are right angles, Total Perimeter Wall Area (TPWA) = $2(L \times H) + 2(H \times W)$.
2. Minimum Total Opening Area (MTOA) must be $\geq (TPWA \times 0.40)$.
3. Therefore, (area of O_1 + area of O_2) must be $\geq (TPWA \times 0.40)$.
4. There must be at least two openings on two different sides or on one side and overhead that are “evenly distributed.”
5. “Evenly distributed” means the smallest opening must be $\geq (MTOA \times 0.20)$.

The following example would apply these definitions to the formula at proposed new N.J.A.C. 8:6-2.3. A rectangular-shaped screened-in patio that is nine feet high, eight feet wide, and 15 feet long would have a total perimeter wall area of 414 square feet, that is, [(nine times eight times two sides) or 144] plus [(9 times 15 times 2 sides) or 270]. The total

area of the openings needed to qualify the area as “not structurally enclosed” must be greater than or equal to 40 percent of 414 square feet, that is, (0.40×414) , or 165.6 square feet. Thus, there would have to be at least two screens with a total area of at least 165.6 square feet (screens qualify as “openings”). In addition, for the openings to be “evenly distributed,” the smallest of the screens used to qualify the area as “not structurally enclosed” would have to have an area of at least 20 percent of 165.6 square feet, that is, (0.20×165.6) , or 33.12 square feet.

Proposed new N.J.A.C. 8:6-2.3(a) would establish that smoking is prohibited at an exterior area if smoking in the exterior area results in migration, seepage, or recirculation of smoke to an indoor public place or workplace at which smoking is prohibited.

Proposed new N.J.A.C. 8:6-2.3(b) would make proposed new subsection (a) inapplicable to outdoor smoking areas designated by the administrator of a correctional facility in accordance with N.J.A.C. 10A:14-2.6, unless inmates would be excluded from using the designated smoking area.

The Act exempts certain cigar bars and cigar lounges from compliance with the Act under certain conditions, and requires cigar bars and cigar lounges to register with the local board of health to avail themselves of the exemption. N.J.S.A. 26:3D-57 and 59. Proposed new subchapter 3 would articulate registration conditions and procedures for

cigar bars and cigar lounges, and would establish a registration application form.

The Act articulates a number of conditions for registration of cigar bars and cigar lounges, and for the annual renewal of that registration. The first of these conditions is that the proposed cigar bar or cigar lounge, in calendar year ending December 31, 2004, generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. N.J.S.A. 26:3D-59a. The second is that the proposed cigar bar or cigar lounge continues to generate 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors in years subsequent to 2004. *Id.* The third is that the proposed cigar bar or cigar lounge not have expanded in size or changed its location since December 31, 2004. *Id.* The fourth is that a proposed cigar bar or cigar lounge that is located within another establishment be enclosed by solid walls or windows, a ceiling, and a solid door and equipped with a ventilation system that is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas. N.J.S.A. 26:3D-57 (definitions of “cigar bar” and “cigar lounge”).

Proposed new N.J.A.C. 8:6-1.2 would define “backstream” to have a meaning consistent with the term “recirculate” as that term is defined in

the mechanical subcode of the New Jersey State Uniform Construction Code at N.J.A.C. 8:23-3.20. This would prohibit the intentional or inadvertent use of air (and smoke) from a smoking area as supply air to nonsmoking areas, and require such air and smoke to be exhausted to the outdoors.

Proposed new N.J.A.C. 8:6-3.1 would articulate the procedures to which applicants for registration would have to adhere to apply for registration and would establish the evidentiary materials applicants would have to submit to enable a local health agency to determine that a proposed cigar bar or cigar lounge meets the conditions for registration articulated in the Act.

Proposed N.J.A.C. 8:6-3.1(a)1 would require applicants to submit the application form provided at proposed N.J.A.C. 8:6 Appendix A, incorporated by reference, by which applicants are to provide a sworn and notarized statement of identifying information about the owners or operators and the establishment.

Proposed new N.J.A.C. 8:6-3.1(a)2 and 3 would require applicants to prove the existence of the establishment as a cigar bar or a cigar lounge as of December 31, 2004 by producing copies of deeds or leases showing the continuous occupancy of the premises as a cigar bar or cigar lounge as of that date, and copies of certificates of occupancy as applicable under local law for the period from December 31, 2004 to the date of the application.

Proposed new N.J.A.C. 8:6-3.1(a)4 would require applicants to submit the sworn and notarized statement of a New Jersey licensed certified public accountant attesting that the that the proposed cigar bar or cigar lounge, in calendar year ending December 31, 2004, generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. The application form provided at proposed N.J.A.C. 8:6 Appendix A would provide a notary-ready form for the use of the New Jersey licensed certified public accountant by which to articulate this financial testimony.

The Department proposes to define “tobacco product” to have the meaning provided in the Tobacco Products Wholesale Sales and Use Tax Act, N.J.S.A. 54:40B-1 et seq., particularly N.J.S.A. 54:40B-2. That act defines “tobacco product” to mean “any product containing any tobacco for personal consumption including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and snuff, but does not include cigarette as defined in section 102 of the ‘Cigarette Tax Act,’ P.L.1948, c.65” (N.J.S.A. 54:40A-1 et seq.). Therefore, the sale of cigarettes could not be counted towards the requirement that a cigar bar or cigar lounge have generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products (and on-site humidor rentals).

Proposed new N.J.A.C. 8:6-3.1(a)4i would provide notice that this financial testimony would be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury.

Proposed new N.J.A.C. 8:6-3.1(a)5 would require that, for a proposed exempt cigar bar or cigar lounge that is located within a nonsmoking establishment, the applicant submit the sworn and notarized affidavit of a New Jersey design professional attesting that the proposed exempt cigar bar or cigar lounge meets the enclosure and ventilation requirements established in the Act.

The Department proposes to define “New Jersey design professional” to mean either a New Jersey licensed professional architect or a New Jersey licensed professional engineer, in accordance with statutes and rules administered by the Department of Law and Public Safety, Division of Consumer Affairs, Professional Boards Section.

Proposed new N.J.A.C. 8:6-3.2(a) would require a local health agency receiving an application for registration of a proposed exempt cigar bar or cigar lounge to confer with the local construction code enforcing agency with jurisdiction to ascertain whether the proposed exempt cigar bar or cigar lounge has expanded in size or has applied to expand in size since December 31, 2004.

Proposed new N.J.A.C. 8:6-3.2(b) would authorize the local health agency to inspect the physical configuration, ventilation system, and sales and rental records of the proposed exempt cigar bar or cigar lounge,

accompanied by any experts the local health agency elects to retain, at no cost to the applicant.

Proposed new N.J.A.C. 8:6-3.2(c) would require the local health agency to schedule any inspections the local health agency may elect to make pursuant to proposed new N.J.A.C. 8:6-3.2(b) to occur within 20 days of the receipt of a completed registration application and supporting documentation.

Proposed new N.J.A.C. 8:6-3.3 would establish procedures by which a local health agency is to review an application for registration of a proposed exempt cigar bar or cigar lounge and the findings the local health agency is to make to register a proposed exempt cigar bar or cigar lounge.

Proposed new N.J.A.C. 8:6-3.3(a) would establish that the local health agency is to review the application and documentation submitted in support thereof, the information the local health agency receives from the local construction code enforcing agency and as a result of any inspections the local health agency elects to conduct, and any applicable local ordinance that provides restriction on or prohibitions against smoking equivalent to or greater than those provided under the Act and the proposed new rules, in accordance with N.J.S.A. 26:3D-63.

Proposed new N.J.A.C. 8:6-3.3(b) would require a local health agency to grant the registration application if it finds that the proposed exempt cigar bar meets the conditions for registration specified in the Act,

provided there is no applicable local ordinance that would prohibit issuance of the registration.

Proposed new N.J.A.C. 8:6-3.3(c) would require a local health agency determining to grant a registration application to so notify the applicant and to place a notice of registration on file in the official records of the local board of health with jurisdiction within 20 days of the local health agency's receipt of the completed application and supporting documentation and the conclusion of any inspections the local health agency may elect to conduct.

Proposed new N.J.A.C. 8:6-3.3(d) would establish that cigar bar and cigar lounge exemption registrations would expire on June 30 following the year of issuance.

Proposed new N.J.A.C. 8:6-3.3(e) would require a local health agency determining to deny an application for registration to so notify an applicant in writing, specifying the basis or bases for the denial within 20 days of the local health agency's receipt of the completed application and supporting documentation and the conclusion of any inspections the local health agency may elect to conduct.

Proposed new N.J.A.C. 8:6-3.4, 3.5, and 3.6 would articulate conditions and procedures for renewal of the registrations of cigar bars and cigar lounges, and would establish a registration renewal application form. The proposed procedures for registration renewal are the same in most respects to the procedures for initial registration provided at

proposed N.J.A.C. 8:6-3.1, 3.2, and 3.3; however, there are several differences between the procedures for initial registration and registration renewal.

First, proposed new N.J.A.C. 8:6-3.4(a) would require an applicant for registration renewal to file the renewal application by April 15 of the year in which the existing registration is to expire, to provide sufficient time for the local health agency to review the application and conduct any elective inspections.

Second, proposed new N.J.A.C. 8:6-3.4(a)4 would shift the focus of financial review upon renewal to the income of the cigar bar or cigar lounge during the calendar year ending December 31 of the year preceding the date of the registration renewal. The Department assumes that initial registration applications would be made in 2006 and would fully address the income of the cigar bar or cigar lounge during the calendar years ending December 31, 2004 and December 31, 2005, inasmuch as these years have concluded. If a local health agency grants registration in 2006, there is no need for the local health agency to revisit the 2004 and 2005 income proofs upon renewal. The Department anticipates that the first round of registration renewal applications would be made in 2007. Therefore, under proposed new N.J.A.C. 8:6-3.4(a)4, the focus upon application for registration renewal probably would be on the income of the cigar bar or cigar lounge during the calendar year ending December 31, 2006.

Third, and under the same rationale, under proposed new N.J.A.C. 8:6-3.4(a)2 and 3, the proofs an applicant would need to submit relating to its continued legal occupancy of the cigar bar or cigar lounge would focus on the period since the last registration to the date of the application for registration renewal.

Fourth, and under the same rationale, the proofs an applicant would need to submit relating to the enclosure, ventilation system, size, or location of the cigar bar or cigar lounge would focus on any changes during the period since the last registration to the date of the application. The Act prohibits registration of a cigar bar or cigar lounge that has changed its location or expanded in size since December 31, 2004, thus, in either of those circumstances, the registration of a cigar bar or cigar lounge could not be renewed. If there were no changes, the applicant would need only to submit the sworn and notarized statement as to that fact contained on the proposed registration renewal application form at N.J.A.C. 8:6 Appendix B. If there were changes to the enclosure or ventilation system since the date of the last registration, then, in addition to the applicant's sworn statement that there have been no change of location or expansion in size since the last registration, proposed new N.J.A.C. 8:6-3.4(b) would require an applicant to provide a sworn statement of a New Jersey design professional that the cigar bar or cigar lounge continues to meet the enclosure or ventilation system conditions for registration specified in the Act. This statement is provided in notary-

ready form on the proposed registration renewal application form at N.J.A.C. 8:6 Appendix B.

Fifth, proposed new N.J.A.C. 8:6-3.5(a) likewise would shift the focus of the local health agency's conferral with the local construction code enforcing agency to any changes to the cigar bar or cigar lounge since the date of the last registration to the date of the application.

Sixth, proposed new N.J.A.C. 8:6-3.6 would shift the focus of the local health agency's review of a renewal application to the compliance of the cigar bar or cigar lounge with the conditions for registration specified in the Act from the date of the last registration to the date of the application.

Proposed new N.J.A.C. 8:6-3.7 would require as a condition of ongoing compliance that a registered cigar bar or a cigar lounge located in a nonsmoking establishment ensure that the door to the cigar bar or cigar lounge remains closed except during entry and egress, and that the separate ventilation system remains in operable condition as specified in the Act. Proposed new N.J.A.C. 8:6-3.7(a)1i would suggest but not require that cigar bars and cigar lounges use a self-closing door as a means to ensure that the door to the cigar bar or cigar lounge remains closed except during entry and egress.

Proposed new subchapter 4 would establish procedures by which tobacco retail establishments can avail themselves of the exemption from the Act that N.J.S.A. 26:3D-59b provides, and would establish circumstances under which the exemption would not be available.

The Act defines tobacco retail establishments as establishments “in which at least” 51 percent “of retail business is the sale of tobacco products and accessories, and in which the sale of other products is merely incidental.” N.J.S.A. 26:3D-57. Thus, an establishment that relies on the routine sale of products other than tobacco products and accessories for its continued viability is not a tobacco retail establishment, and the Act prohibits smoking in such places. To implement this condition of eligibility for the exemption, proposed new N.J.A.C. 8:6-1.2(b) would define the phrase “incidental” to mean “minor and occasional,” and would further provide that the sale of food or beverages for on-site consumption is not the “incidental sale of other products.” Therefore, an establishment that would meet the first prong of the definition of a tobacco retail establishment, that is, 51 percent of its retail business were the sale of tobacco products and accessories, would not qualify for the exemption if its sales of other products were not incidental or, as a more specific example, if it engages in the sale of food or beverages for on-site consumption.

In addition, as with cigar bars and cigar lounges, sales of cigarettes could not be counted toward the requirement that 51 percent of the establishment’s retail business be from the sale of tobacco products and accessories.

Proposed new N.J.A.C. 8:6-4.1 would provide tobacco retail establishments with a mechanism by which they could notify the local

health agency with jurisdiction of the tobacco retail establishment's intention to claim the exemption. Similar to the procedure for registration of an exempt cigar bar or cigar lounge, proposed new N.J.A.C. 8:6-4.1 would require a tobacco retail establishment intending to claim the exemption to file a notice by April 15 of each year in the form provided at proposed N.J.A.C. 8:6 Appendix C, incorporated by reference, containing the sworn and notarized statement of the owner or operator of the establishment, describing the establishment and the source of the retail sales the establishment realizes, and accompanied by the sworn and notarized statement of a New Jersey licensed certified public accountant attesting that during the calendar year ending December 31 of the year preceding the year in which the notice of claim of exemption is made, the establishment's total retail business was from the on-site sale of tobacco products and accessories and that sales of other products were incidental. The form at proposed N.J.A.C. 8:6 Appendix C provides a notary-ready statement to this effect for the applicant's use. Proposed new N.J.A.C. 8:6-4.1(a)1 would provide notice that this financial testimony would be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury.

Proposed new N.J.A.C. 8:6-4.2 would articulate circumstances in which the exemption provided at N.J.S.A. 26:3D-59b would not apply.

Similar to the conditions for registration of a cigar bar or cigar lounge located in a nonsmoking establishment, proposed new N.J.A.C.

8:6-4.2(a) would make the exemption unavailable to tobacco retail establishments located within an indoor public place or a workplace unless the tobacco retail establishment meets the same enclosure and ventilation requirements provided for cigar bars and cigar lounges, and provided as a condition for the exemption, the door remains closed except during entry and egress, and the ventilation system remains operable.

As with respect to cigar bars and cigar lounges, proposed new N.J.A.C. 8:6-4.2(b) would make the exemption unavailable to the extent an applicable local ordinance restricts or prohibits its availability, in accordance with N.J.S.A. 26:3D-63.

Proposed new subchapter 5 would address the exemption from the Act that N.J.S.A. 26:3D-59e provides to casinos and casino simulcasting facilities.

N.J.S.A. 26:3D-59e exempts from the requirements of the Act “the area within the perimeter” of casinos and casino simulcasting facilities that contains a specified number of wagering locations. The enabling legislation and rules of the Casino Control Commission define “casinos” (also commonly referred to as “casino floors” or “casino rooms”) and “casino simulcasting facilities” as specified locations within a Commission-approved hotel operated by a casino licensee at which wagering may occur. N.J.S.A. 5:12-6 and 5:12-194; N.J.A.C. 19:55-1.1. Therefore, only those specific locations within a casino hotel that the Commission approves as wagering areas are exempt from the Act. The Act’s

prohibition against smoking would apply to non-wagering areas of casino hotels, inasmuch as these are indoor public places and workplaces.

Proposed new N.J.A.C. 8:6-5.1 would address the applicability of the Act to establishments in casino hotels, such as restaurants and bars, located in whole or in part within a designated wagering area.

In proposing the amendment that established the exemption of casinos and casino simulcasting facilities from the Act, Senator John Adler, a sponsor of the Act, stated: “The purpose of this amendment, in specifying ‘the area within the perimeter of a casino and simulcasting facility,’ is to exempt only those areas in a casino and simulcasting facility that are completely surrounded by the applicable wagering area.”

Statement to First Reprint of Senate, No. 1926 with Senate Floor Amendments (Proposed by Senator Adler) (December 8, 2005).

Therefore, consistent with this expression of legislative intention, proposed new N.J.A.C. 8:6-5.1 would establish that the “area within the perimeter of” a casino or a casino simulcasting facility would include only those establishments within a casino hotel, such as restaurants, snack bars, bars, and lounges, that are “completely surrounded by” the Commission-approved wagering area. Proposed new N.J.A.C. 8:6-5.1 would further establish that the perimeter of a casino or a casino simulcasting facility is the boundary of gaming areas licensees designate on floor plans they are required to file with commission as part of their operation certificates, pursuant to N.J.A.C. 19:43-7.3(b)1. Proposed new

N.J.A.C. 8:6-5.1 would further establish that for an establishment to be “completely surrounded” by a casino or a casino simulcasting facility, the gaming area must exist on all sides of, that is, in a 360-degree radius around, the establishment, provided the gaming area contains the number of wagering locations specified in the Act at N.J.S.A. 26:3D-59e(1) or (2).

The Department is aware that the Commission has a procedure in place by which casino hotels can obtain temporary expansion of their approved casinos or casino simulcasting facilities into areas of the hotel not usually used for gaming, such as banquet rooms, for special events, such as poker tournaments. The Commission does this by means of a resolution allowing amendment of the casino hotel’s operation certificate to authorize the temporary expansion. If smoking were permitted in these areas that are usually non-smoking areas, then after the special event is over and the area is returned to its usual use, persons entering the area who would have avoided smoking areas could be exposed to lingering secondhand smoke. Therefore, the Department proposes new N.J.A.C. 8:6-5.2, which would make the temporary expansion of casinos and casino simulcasting facilities ineligible for the exemption the Act affords casino and casino simulcasting facilities pursuant to N.J.S.A. 26:3D-59e. This provision would be generally consistent with the Department’s intention with respect to proposed new N.J.A.C. 8:6-2.2 (see discussion above).

As a result of the availability of an exemption for certain areas of casino hotels, there will be places in casino hotels at which one can go from a smoking area to a nonsmoking area on the same floor or in the same area. Consistent with the Legislature's intention to provide notification to persons as to areas designated for smoking and not smoking as expressed at N.J.S.A. 26:3D-61, proposed new N.J.A.C. 8:6-5.3 would require casino licensees to post signage at each entrance to a smoking and non-smoking area to notify persons whether the area is one at which smoking is permitted or not permitted, and would require these signs to be consistent with the technical requirements for signage provided at N.J.S.A. 26:3D-61.

Proposed new subchapter 6 would address signage requirements for designation of smoking and nonsmoking areas. The Act requires persons having control of establishments to post signage indicating those locations where smoking is prohibited and those locations at which smoking is permitted. N.J.S.A. 26:3D-61. Proposed new N.J.A.C. 8:6-6(a) and (b) would establish forms of signs, provided in proposed N.J.A.C. 8:6 Appendices D through G, incorporated by reference, that would be acceptable for use in meeting the signage requirements of the Act, to provide a safe harbor for compliance. Proposed new N.J.A.C. 8:6-6(c) would articulate that the use of forms of signage other than those established in proposed new N.J.A.C. 8:6-6(a) and (b) also would be

acceptable, provided the signage used meets the requirements of N.J.S.A. 26:3D-61.

Proposed new subchapter 7 would address school buildings and grounds.

Proposed new N.J.A.C. 8:6-7.1 would articulate the purpose of the subchapter, that is, to implement the prohibition against smoking in school buildings and on school grounds provided at N.J.S.A. 26:3D-58.

Proposed new N.J.A.C. 8:6-7.2 would articulate a collective definition of the terms “school buildings” and “school grounds” as being generally consistent with the definition of these terms provided in the rules of the Department of Education at N.J.A.C. 6A:16-1.3 and 6A:26-1.2. The Department proposes to define “school” at N.J.A.C. 8:6-1.2 to mean both public and private elementary and secondary schools.

In response to inquiries the Department has received, the Department proposes new subchapter 8 to address special situations involving residences.

Proposed new N.J.A.C. 8:6-8.1(a) would establish that a rectory or convent is not a private residence for purposes of the exemption provided at N.J.S.A. 26:3D-59d if it is a workplace or if it is generally accessible to the public.

Proposed new N.J.A.C. 8:6-8.1(b) would reconcile the prohibition against smoking in school buildings or on school grounds with the exemption for private residences, with respect to faculty or administrator

residences on school grounds. Similar to rectories and convents, proposed new N.J.A.C. 8:6-8.1(b) would exempt faculty and administrator residences unless the residence is a workplace of the school, that is, at which school personnel are required to perform work; the residence is generally accessible to the public; or if students have access to the residence or the building in which it is located.

Proposed new subchapter 9 would establish procedures for enforcement of the Act.

The Act provides that violations of the Act are subject to specified fines collected in summary civil proceedings brought by summons or warrant issued by or in the name of the Commissioner of the Department or the local board of health in a municipal court with territorial jurisdiction. N.J.S.A. 26:3D-62. Proposed new N.J.A.C. 8:6-9.1 would establish procedures for enforcement against individuals.

Proposed new N.J.A.C. 8:6-9.1(a) would require persons having control of indoor public places and workplaces to order persons smoking illegally to comply with the Act, and would authorize but not require them to provide the person smoking illegally with the form of information notice provided at proposed N.J.A.C. 8:6 Appendix H.

Proposed new N.J.A.C. 8:6-9.1(b) would require persons having control of indoor public places and workplaces to arrange for the departure and removal of persons who continue to smoke illegally after having been ordered to cease, and authorizes persons having control of an

establishment to request the assistance of law enforcement or peace officers to accomplish this departure and removal.

Proposed new N.J.A.C. 8:6-9.1(c) would authorize any person to file a complaint against a person smoking illegally, by contacting the local health agency with jurisdiction and adhering to complaint procedures that entity is to establish, by filing a complaint directly with the municipal court with jurisdiction over the establishment, or by filing the proposed form of complaint provided at proposed N.J.A.C. 8:6 Appendix I, incorporated by reference, with the Indoor Environments Program of the Department.

Proposed new N.J.A.C. 8:6-9.1(d) would indicate that the section would not impair the ability of law enforcement or peace officers with jurisdiction from proceeding against a person smoking illegally under other applicable laws, including N.J.S.A. 2C:33-13. N.J.S.A. 2C:33-13 makes smoking on certain buses and other public conveyances, and in certain public places and places of public accommodation, a petty disorderly persons offense, punishable by a fine of \$200.00.

Proposed new N.J.A.C. 8:6-9.2 would authorize any person to file a complaint against a person having control of an indoor public place or workplace who violates or fails or refuses to enforce the Act and proposed new N.J.A.C. 8:6, either by contacting the local health agency with jurisdiction and adhering to complaint procedures that entity is to establish, by filing a complaint directly with the municipal court with jurisdiction over the establishment, or by filing the proposed form of

complaint provided at proposed N.J.A.C. 8:6 Appendix I with the Indoor Environments Program of the Department.

Proposed new N.J.A.C. 8:6-9.3(a) would establish a procedure by which a person may submit an anonymous request for investigation of an indoor public place or workplace for alleged violation of, or failure or refusal to comply with or enforce, the Act and proposed new N.J.A.C. 8:6, either by contacting the local health agency with jurisdiction and adhering to procedures that entity is to establish, or by submitting the proposed form of request for investigation at proposed N.J.A.C 8:6 Appendix J with the Indoor Environments Program of the Department. Proposed new N.J.A.C. 8:6-9.3(b) would articulate that an anonymous request for investigation would not be evidence of violation of, or failure or refusal to comply with or enforce, the Act and proposed new N.J.A.C. 8:6.

N.J.S.A. 26:1A-16 through 20 articulate the Commissioner's general authority and powers to include the right to full access to premises to carry out the responsibilities of the Department. Consistent with this authority, proposed new N.J.A.C. 8:6-9.4 would require persons having control of an establishment to provide representatives of local health agencies, the Department, and experts they may retain, with full access to the establishment for the purpose of examination, inspection, investigation, and enforcement of the Act and proposed N.J.A.C. 8:6.

Proposed new N.J.A.C. 8:9.5 would rearticulate the fines established at N.J.S.A. 26:3D-62.

Subchapter 10 would address forms prescribed in the chapter. Proposed new N.J.A.C. 8:6-10.1 would provide that single copies suitable for photocopying of the forms provided in the chapter would be available upon request to the Indoor Environments Program and would be available for download from the Forms internet web page of the Department.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Proposed new N.J.A.C. 8:6-1.1 would establish the purpose of proposed new N.J.A.C. 8:6 and would describe the reason for the chapter's existence. Proposed new N.J.A.C. 8:6-1.2 would provide guidance to the regulated community in establishing definitions of words and terms used in the Act and in proposed new N.J.A.C. 8:6. The social impact of these definitions would be reflected as they are applied in the Act and in the other subchapters of N.J.A.C. 8:6, as discussed below.

Proposed new N.J.A.C. 8:6-2.1 would capture the general rule as articulated in the Act that the Act applies to indoor public places and workplaces. Proposed new N.J.A.C. 8:6-2.2 would protect workers and the public from exposure to lingering secondhand smoke in establishments that would otherwise be subject to the Act, regardless of whether workers and the public would be on the premises when smoking

would occur, and regardless of whether the establishment occasionally would be “not structurally enclosed.”

The establishment of smoke-free indoor areas is of little purpose if smoke enters openings to these areas from outside at close range. As stated in the Act, “the separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system.” N.J.S.A. 26:3D-56. Proposed N.J.A.C. 8:6-2.3(a) would have a beneficial social impact in preventing exposure of persons to secondhand smoke in indoor public places and workplaces at which smoking is prohibited. Owners and operators would have the discretion and responsibility to establish site-specific conditions for smoking in exterior areas of their establishments appropriate to their particular circumstances and environs to ensure that smoke does not enter nonsmoking areas of establishments at which smoking is prohibited. Local municipal and county governments would retain authority pursuant to N.J.S.A. 26:3D-63 to articulate conditions for smoking in exterior areas, such as minimum distance setbacks or “buffer zones,” provided those conditions “provide restriction on or prohibitions against smoking equivalent to or greater than, those provided under” the Act and the proposed new rules.

The proposed inapplicability of proposed N.J.A.C. 8:6-2.3(a) to designated outdoor smoking areas established by the administrator of a correctional facility in accordance with N.J.A.C. 10A:14-2.6 would take into

account the security and space usage issues correctional facility administrators address by means of facility-specific internal management procedures. The exemption is consistent with N.J.S.A. 26:3D-63, which generally establishes that rules promulgated to provide protection of life and health greater than that provided under the Act supersede the Act. The proposed inapplicability of this exemption to smoking areas from which inmates would be excluded would protect correctional facility workers and the public from exposure to secondhand smoke when not necessary to address space allocation as an element of inmate and correctional facility worker security.

Proposed new N.J.A.C. 8:6-3 and 4 would have a beneficial social impact by articulating procedures and proof requirements by which cigar bars, cigar lounges, and tobacco retail establishments that meet the conditions specified in the Act can avail themselves of the exemptions the Act establishes for such establishments. The requirement that applicants submit the sworn statement of New Jersey licensed certified public accountants and, as applicable, New Jersey design professionals, to establish the financial and structural proofs necessary for registration would simplify the registration application process. Applicants can obtain necessary sworn statements from professionals familiar with their establishments. The investigatory burden on local health agencies would be simplified and reduced, inasmuch as local health agencies can rely on the veracity of these licensed professionals' statements, which are

inherently subject to the professional, ethical, and licensure standards applicable to the particular profession. At the same time, proposed new N.J.A.C. 8:6-3 and 4 would empower local health agencies to make the investigations they deem appropriate and to retain professionals to assist them in that investigation, and would allow them to take into account more stringent local ordinances that would affect the availability of the exemptions. The shift in focus upon application for renewal of an existing registration to review of the continued compliance of the cigar bar or cigar lounge with the Act's conditions for registration since the date of the last registration would eliminate redundant reporting and recordkeeping and the necessity of local health agencies' reconsideration of matters already proved.

The Act prohibits smoking in an "indoor public place," which term includes a "shopping mall or retail store." N.J.S.A. 26:3D-57. Proposed new N.J.A.C. 8:6-3 would have a beneficial social impact by reconciling the Act's exemption for tobacco retail establishments with the prohibition of smoking in an indoor public place. Proposed new N.J.A.C. 8:6-3 would accomplish this by articulating procedures and proof requirements through which a tobacco retail establishment located in a nonsmoking establishment can avail itself of the exemption by meeting the structural and ventilation requirements applicable to cigar bars and cigar lounges located within nonsmoking establishments pursuant to proposed N.J.A.C. 8:6-3.

Proposed new N.J.A.C. 8:6-5.1 would have a beneficial social impact by eliminating a potential ambiguity that exists in the Act with respect to establishments located in whole or in part within casinos and casino simulcasting facilities.

Proposed new N.J.A.C. 8:6-5.2 would protect persons entering areas of casino hotels that are usually non-smoking areas from the effects of lingering secondhand smoke in areas that casino hotels may use for temporary expansion of Commission-approved casinos and casino simulcasting facilities.

Proposed new N.J.A.C. 8:6-5.3 would have a beneficial social impact in that it would enable smokers in casino hotels to avoid violating the law, and would notify persons who would prefer to avoid smoking areas in casino hotels as to those areas at which they could be exposed to secondhand smoke, and those areas at which they can avoid it.

Proposed new N.J.A.C. 8:6-6.1 would have a beneficial social impact by establishing an optional “safe harbor” signage standard for persons having control of an indoor public place or workplace obliged by the Act to post signs. At the same time, proposed new N.J.A.C. 8:6-6.1 would provide these persons with discretion to design their own forms of signage, provided the signs comply with the requirements of the Act at N.J.S.A. 26:3D-61.

Proposed new N.J.A.C. 8:6-7 would provide guidance to public and non-public schools as to the expansive breadth of the prohibition against

smoking in school buildings and on school grounds. Proposed new N.J.A.C. 8:6-8 would provide guidance in response to issues the Department has received as to the applicability of the exemption for private residences in certain situations. Proposed new N.J.A.C. 8:6-7 and 8 would have a beneficial social impact by helping the regulated community to avoid violations while helping to protect students and other members of the public from exposure to secondhand smoke.

Proposed N.J.A.C. 8:6-9.1(a) and (b) would have a beneficial social impact by providing guidance to persons having control of indoor public places and workplaces as to their obligation to enforce the smoking prohibition. The Department anticipates that persons having control of an establishment will exercise reasonable judgment in their exercise of the obligation to ensure compliance with the smoking prohibition, in the same way they currently treat persons causing a disturbance or acting disorderly at an establishment, that is, through the exercise of reasonable and progressive enforcement measures. The Department anticipates that most persons smoking illegally will cease to do so when reminded of the prohibition, and for this reason the Department has developed the form of notice provided at proposed N.J.A.C. 8:6 Appendix H, as a simple tool for the optional use of persons in control of an establishment. Ideally and preferably, persons having control of an establishment will not need to involve law enforcement or peace officers, except as a last resort with

respect to a recalcitrant person smoking illegally who refuses to either stop smoking or leave.

The purpose of involving law enforcement or peace officers is not to file complaints for violation of the Act and proposed new N.J.A.C. 8:6 but to obtain the orderly removal of persons smoking illegally. Proposed new N.J.A.C. 8:6-9.1(c) would have a beneficial social impact in that it articulates the procedure for instituting a complaint against an individual for violation of the Act and proposed N.J.A.C. 8:6. Proposed new N.J.A.C. 8:6-9.1(d) would highlight the potential applicability of other laws with which persons smoking illegally or refusing to discontinue smoking could be charged, including the criminal petty disorderly persons offense of “smoking in public” established pursuant to N.J.S.A. 2C:33-13.

Proposed new N.J.A.C. 8:6-9.2 would have a beneficial social impact in that it would highlight the obligation of persons having control of an establishment at which smoking is prohibited to either enforce the Act and proposed new N.J.A.C. 8:6, or be subject to a complaint under the Act. Proposed new N.J.A.C. 8:6-9.2 would have a beneficial social impact by articulating the procedure for instituting a complaint against an individual for violation of the Act and proposed N.J.A.C. 8:6, that is, by contacting the local health agency with jurisdiction and adhering to complaint procedures that entity is to establish, by filing a complaint directly with the municipal court with jurisdiction over the establishment, or

by filing the proposed form of complaint provided at proposed N.J.A.C. 8:6 Appendix I with the Indoor Environments Program of the Department.

Proposed new N.J.A.C. 8:6-9.3 would have a beneficial social impact by establishing a procedure for persons to submit an anonymous request for an investigation by the local health agency with jurisdiction or the Department's Indoor Environments Program as to the violation of, or failure or refusal to comply with, the Act and proposed new N.J.A.C. 8:6 by a person having control of an indoor public place or a workplace. This would enable persons fearing reprisal to obtain enforcement assistance without risk to themselves. At the same time, inasmuch as a request for investigation would not be a signed and sworn statement, the request for investigation itself could not be used as evidence in a case against a person having control of an indoor public place or a workplace for alleged violation of, or failure or refusal to comply with, the Act and proposed new N.J.A.C. 8:6.

Proposed new N.J.A.C. 8:6-9.4 would have a beneficial social impact by notifying persons having control of an establishment of the authority of representatives of local health agencies with jurisdiction and the Department, and experts they may retain, to have full access for the purposes of examination, inspection, investigation, and enforcement of the Act and proposed N.J.A.C. 8:6. This would assist these representatives of the Commissioner in the exercise of their duties and eliminate ambiguity as to their ability to enter premises to ensure and secure compliance.

Proposed new N.J.A.C. 8:6-9.5 would have a beneficial social impact by reminding interested persons of the fines for violations the Act establishes at N.J.S.A. 26:3D-62.

Proposed N.J.A.C. 8:6-10.1 would have a beneficial social impact by establishing an easy means by which persons needing forms referred to in proposed N.J.A.C. 8:6 would be able to obtain single copies without cost from the Department's Indoor Environments Program and to download them for reproduction.

Economic Impact

The proposed new rules at N.J.A.C. 8:6 would impose costs on the Department, local health agencies, owners, operators, and persons having control of indoor public places and workplaces.

Owners, operators, and persons having control of indoor public places and workplaces who seek to claim the exemptions the Act establishes for cigar bars, cigar lounges, and tobacco retail establishments would incur administrative costs associated with completion of the applicable forms and securing the services of a notary public in accordance with proposed new N.J.A.C. 8:6-3 and 4. They would incur professional services costs associated with securing the sworn statements of New Jersey licensed certified public accountants and New Jersey design professionals necessary to prove their establishments meet the Act's financial, structural, and ventilation conditions for the

exemption. Local health agencies and, to a lesser extent local construction code enforcement agencies, would incur administrative and staff costs associated with processing applications. Local health agencies may incur costs if they elect to retain the services of professionals to inspect establishments to verify that an establishment meets the Act's financial, structural, and ventilation conditions for an exemption. Local health agencies can lessen these costs if they are able to work cooperatively with on-staff financial, structural, and ventilation professionals in local government service to assist in these optional inspections.

The costs associated with the retention of New Jersey licensed certified public accountants and New Jersey design professionals, either by exemption candidates or by local health agencies, would vary depending upon such factors as a particular professional's experience and level of expertise, the amount of time the professional would need to spend to evaluate the establishment that is the exemption candidate, the particular professional's existing familiarity with the exemption candidate, the complexity of the financial, structural, or ventilation systems to be examined, the region of the State in which the professional practices, and, with respect to local health agencies, the availability of competitive bidding processes to encourage competitive pricing.

If the New Jersey Department of the Treasury, Division of Taxation, audits sworn financial statements submitted to local health agencies in

furtherance of exemption claims and finds the statements to be inaccurate or inconsistent with representations made to that Division for taxation purposes, the persons making or responsible for those sworn statements may be subject to civil and criminal penalties and fines that the Division administers. New Jersey licensed certified public accountants or design professionals involved in the submission of inaccurate sworn statements may be subject to licensure actions by their respective licensing agencies in the Professional Boards Section of the Division of Consumer Affairs of the New Jersey Department of Law and Public Safety.

Owners, operators, and persons having control of indoor public places and workplaces would incur administrative and personnel costs associated with obtaining, developing, printing, and posting signage required by the Act. The Department has attempted to minimize this burden through proposed new N.J.A.C. 8:6-6 by developing readily available forms of acceptable signage.

Persons seeking to file a complaint or a request for investigation would incur administrative costs associated with submitting a complaint or request form. Persons who violate or who, having a duty to enforce, fail or refuse to enforce, the Act and N.J.A.C. 8:6 would be subject to the fines and penalties established in the Act at N.J.S.A. 26:3D-62, as rearticulated at N.J.A.C. 8:6-9.5.

The Act provides at N.J.S.A. 26:3D-62c that penalties recovered in a civil action instituted by a local health agency would be payable to the

treasury of the municipality where the violation occurred. This may enable some municipal governments to offset the costs of investigation and enforcement that proposed N.J.A.C. 8:6 may cause them to incur.

The Department is aware of the assertion that the Act's prohibition against smoking in indoor public places and workplaces may have a negative economic impact on the hospitality industries of the State. The Department does not believe this assertion to be correct. See, for example, the discussion contained in the Legislative Fiscal Estimate to Assembly, No. 3730, State of New Jersey 211th Legislature (July 15, 2005). Moreover, to the extent the prohibition against smoking in indoor public places and workplaces may have a negative impact on the sales of particular establishments who rely on a smoking clientele, this would be as a result of the Act, not the proposed new rules at N.J.A.C. 8:6 implementing the Act.

Federal Standards Statement

The Department is not proposing the proposed new rules under the authority of, or in order to implement, comply with, or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, standards or requirements. The Department is proposing the proposed new rules under the authority of N.J.S.A. 26:1A-15 and 16 through 19, and 26:3D-55 et seq., particularly 26:3D-64. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed new rules may result in increased demand for the services of New Jersey licensed certified public accountants and New Jersey design professionals and for the services of persons who develop and print signage necessitated by the Act; however, the Department does not anticipate that the demand would be so great as to result in the creation of additional jobs in these professions. The Department does not anticipate that the proposed new rules would result in the loss of jobs in the State.

The Department is aware of the assertion that the Act's prohibition against smoking in indoor public places and workplaces may have a negative impact on the demand for jobs in the service and hospitality industries. The Department does not believe this assertion to be correct. See, for example, the discussion contained in Legislative Fiscal Estimate to Assembly, No. 3730, State of New Jersey 211th Legislature (July 15, 2005). Moreover, to the extent prohibiting smoking in indoor public places and workplaces may result in decreased demand for jobs in the service industries, this would be as a result of the Act, not the proposed new rules implementing the Act.

Except as described above, the proposed new rules would not have an impact on the creation or loss of jobs in the State.

Agriculture Industry Impact

The proposed new rules would not have an impact on the agriculture industry of the State.

Regulatory Flexibility Statement

As described in the Summary, the proposed new rules would impose reporting, recordkeeping and other compliance requirements on the Department, local health agencies, and owners, operators, and persons having control of establishments.

Of these, only owners, operators, and persons having control of establishments may be small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The requirements imposed on owners, operators, and persons having control of establishments that are small businesses are the same as those imposed on businesses generally, and the Summary describes these requirements.

The proposed new rules would require small businesses seeking to claim the exemption provided in the Act for cigar bars, cigar lounges, and tobacco retail establishments would be required to retain the services of professionals to claim the exemptions. The Economic Impact describes the types of professionals whose retention the proposed new rules would require and the estimated costs associated with their retention.

Proposed N.J.A.C. 8:6-2.3(a) would minimize the regulatory burden of the proposed new rules on owners and operators of nonsmoking establishments that are small businesses by permitting and requiring them to customize the manner by which they prevent intake of smoke to nonsmoking areas from exterior areas based on their particular circumstances and environs.

The Department has determined that the proposed new rules would establish the minimum standards necessary to implement the Act and its purposes of protecting workers and the nonsmoking public from tobacco smoke. Therefore, the Department has provided no lesser or differing standards for owners, operators, and persons having control of establishments that are small businesses.

Smart Growth Impact

The rules proposed for readoption have not had and would not have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 6

SMOKE-FREE AIR

SUBCHAPTER 1. GENERAL PROVISIONS

8:6-1.1 Purpose

The purpose of this chapter is to implement P. L. 2005, c. 383, the “New Jersey Smoke-Free Air Act” (Act), N.J.S.A. 26:3D-55 et seq.

8:6-1.2 Definitions

(a) The following words and terms are defined in the Act at N.J.S.A. 26:3D-55 et seq., particularly 26:3D-57 and 59, and are used in this chapter as defined in the Act:

“Bar”

“Casino”

“Casino simulcasting facility”

“Cigar bar”

“Cigar lounge”

“Indoor public place”

“Person having control of an indoor public place”

“Smoking”

“Tobacco retail establishment”

“Workplace”

(b) As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Backstream” means recirculate, as that term is defined in the mechanical subcode of the New Jersey State Uniform Construction Code at N.J.A.C. 5:23-3.20.

“Commission” means the New Jersey Casino Control Commission as that term is defined at N.J.S.A. 5:12-14.

“Department” means the Department of Health and Senior Services.

“Establishment” means a place of business, commerce or other service-related activity, whether public or privately owned or operated on a for-profit or nonprofit basis.

“Exterior area” means an area that is not structurally enclosed.

1. Potential examples of exterior areas, depending upon whether an area is structurally enclosed, can include balconies, courtyards, decks, gazebos, parking lots, patios, porches, sidewalks, terraces, or yards.

“Evenly distributed” means, with respect to the openings used to qualify a space as not structurally enclosed, the area of the smallest opening is no less than 20 percent of the total opening area necessary to qualify the space as being not structurally enclosed.

“Generally accessible to the public,” when used to describe an establishment, means:

1. Persons other than persons having control of an establishment are permitted or required to enter the establishment, for any purpose, regardless of whether the entry is occasional or routine; or

2. Persons other than persons having control of the establishment perform a service or labor at the establishment, regardless of whether the service or labor is performed for profit or remuneration or on a non-profit or volunteer basis, and regardless of whether the service or labor is performed occasionally or routinely.

“Incidental” means minor and occasional.

1. The sale of food or beverages for on-site consumption is a not an incidental sale of other products.

“Indoor Environments Program” means the program by that name established in the Public Health Services Branch of the Department, the mailing address of which is as follows: Indoor Environments Program, Consumer and Environmental Health Services, Public Health Services Branch, New Jersey Department of Health and Senior Services, P O Box 369, Trenton, NJ 08625-0369.

“Local board of health” shall have the meaning provided at N.J.A.C. 8:52-2.1.

“Local health agency” shall have the meaning provided at N.J.A.C. 8:52-2.1.

1. A searchable database and downloadable list of local health agencies, the municipalities over which they have jurisdiction, and their contact information is available at <http://nj.gov/health/lh/directory/lhdselectcounty.htm>.

2. Contact information for local health agencies is available in the government listings section (blue pages) of most telephone directories.

3. The Department shall provide contact information for local health agencies upon request made by telephone to (609) 292-4993 or in writing to the Office of Public Health Infrastructure, P O Box 360, Trenton, NJ 08625-0360.

“New Jersey design professional” means:

1. A person licensed in New Jersey as a registered architect pursuant to Title 45 of the New Jersey Statutes, particularly N.J.S.A. 45:3-1 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 13:27; or

2. A person licensed in New Jersey as a professional engineer pursuant to Title 45 of the New Jersey Statutes, particularly N.J.S.A. 45:8-27 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 13:40.

“New Jersey licensed certified public accountant” means a person licensed in New Jersey as a certified public accountant pursuant to Title 45 of the New Jersey Statutes, particularly N.J.S.A. 45:2B-42 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 13:29.

“Not structurally enclosed” means:

1. There are evenly distributed openings on at least two or more sides, or on at least one side and overhead; and
2. The total area of the openings is at least 40 percent of the total area of the perimeter walls.

“Opening” means a door, a window, a louver, a skylight, a food or beverage pass-through, or any aperture that allows the exchange of air between a building interior and the outside atmosphere.

1. An opening remains an “opening” when screening is in place, such as at a screened-in porch, but not if or when the screening is replaced by a material that obstructs airflow such as a storm window, glass, wood, awning material, tent material, or plastic or polyethylene sheeting such as Visqueen.

2. An exterior wall or portion thereof consisting of glass, wood, awning material, tent material, or plastic or polyethylene sheeting such as Visqueen is not an “opening.”

“Person having control of an establishment” means the owner or operator of the establishment.

“School” means public and private elementary and secondary schools.

“Tobacco product” shall have the meaning provided in the Tobacco Products Wholesale Sales and Use Tax Act, N.J.S.A. 54:40B-1 et seq., particularly N.J.S.A. 54:40B-2.

SUBCHAPTER 2. INDOOR PUBLIC PLACE OR WORKPLACE

8:6-2.1 Indoor public places and workplaces subject to the Act unless exemption applies; more stringent provisions authorized

(a) Pursuant to N.J.S.A. 26:3D-58, an indoor public place or a workplace is subject to the Act and this chapter, except as provided in the Act, particularly at N.J.S.A. 26:3D-59, and this chapter.

(b) An establishment is an indoor public place if it is structurally enclosed and generally accessible to the public.

(c) This chapter shall not be construed to limit the ability of an owner or operator of an establishment from establishing restrictions on or prohibitions against smoking at the establishment that are greater than those provided in the Act and this chapter.

8:6-2.2 Smoking in indoor public place or workplace; time irrelevant

(a) The time of entry into an establishment by workers or members of the public is irrelevant to the issue of whether the establishment is an generally accessible to the public and/or a workplace.

1. For example, the fact that janitorial personnel may enter a structurally enclosed establishment during times other than those times when smoking would occur in the establishment does not matter; the establishment would be a workplace and/or an indoor public place at which smoking is prohibited.

(b) The fact that an establishment is not always structurally enclosed is irrelevant to the issue of whether smoking is prohibited at the establishment if the establishment is occasionally or seasonally an indoor public place and/or a workplace.

1. For example, the fact that smoking would occur in an establishment that is generally accessible to the public in the summer when screens would be in place in openings that would qualify the establishment as “not structurally enclosed,” and that smoking would not occur in winter when storm windows are in place is irrelevant; if the openings are not permanently open, the area is an indoor public place and/or a workplace at which smoking is prohibited at all times.

8:6-2.3 Exterior area of indoor public place or a workplace

(a) Subject to (b) below, smoking is prohibited at an exterior area if smoking in the the exterior area results in migration, seepage, or recirculation of smoke to an indoor public place or a workplace at which smoking is prohibited.

(b) Subsection (a) above shall not apply to a designated outdoor smoking area established by the administrator of a correctional facility in accordance with N.J.A.C. 10A:14-2.6, provided that this exception shall not apply to smoking areas established for the exclusive use of persons other than inmates.

SUBCHAPTER 3. REGISTRATION: CIGAR BAR, CIGAR LOUNGE

8:6-3.1 Procedure for initial registration; form

(a) A person having control of an establishment seeking to register the establishment or an area within the establishment as an exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59 shall submit the following to the local health agency with jurisdiction over the municipality in which the proposed exempt cigar bar or cigar lounge is located:

1. The completed and fully executed application form provided at Appendix A, incorporated herein by reference;
2. A copy of deeds or leases for the premises at which a proposed exempt cigar bar or cigar lounge is located held by the applicant or its predecessors in title or leasehold showing the

occupancy of the premises as a cigar bar or cigar lounge as of December 31, 2004, to the date of application;

3. A copy of the certificate of occupancy for the premises as of December 31, 2004, and/or thereafter, as applicable, if the issuance of a certificate of occupancy was or is a condition of occupancy pursuant to applicable local law, as of December 31, 2004, and/or thereafter; and

4. The sworn and notarized affidavit of a New Jersey licensed certified public accountant attesting that the proposed exempt cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, excluding sales from vending machines, for the calendar year ending December 31, 2004, and for each succeeding calendar year ending December 31 of the year preceding the date of the application;

i. The information contained in the application and affidavit required pursuant to paragraphs 1 and 4 above shall be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury; and

5. If the proposed exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act, the sworn and notarized affidavit of a New Jersey design professional attesting that:

i. The proposed exempt cigar bar or cigar lounge is in an area within the location that is enclosed by:

(1) Solid walls or windows;

(2) A ceiling; and

(3) A solid door; and

ii. The ventilation system of the proposed exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the proposed smoking area would not be recirculated to the nonsmoking areas and smoke would not be backstreamed into the nonsmoking areas.

8:6-3.2 Local health agency conferral with permit entity; access for inspection

(a) A local health agency to which an initial application for registration of a proposed exempt cigar bar or cigar lounge has been made shall confer with the local construction code enforcing agency with jurisdiction over the municipality in which the proposed exempt cigar bar or cigar lounge is located to ascertain whether, since December 31, 2004, to the date of the application, the proposed exempt cigar bar or cigar lounge has expanded in size and/or whether a permit to expand in size has been made.

(b) Upon reviewing any documents or information that the applicant submits pursuant to N.J.A.C. 8:6-3.1, the local health agency may require the applicant to provide the local health agency and, at the option of the local health agency, any experts retained by, and at the expense of, the local health agency, with access to inspect one or more of the following, at no cost to the applicant:

1. The physical configuration of the establishment at which the proposed exempt cigar bar or cigar lounge is located;
2. The ventilation systems at the establishment; and
3. Records of sales of tobacco products and/or rentals of on-site humidors occurring at the establishment for the periods addressed in the application.

(c) The local health agency shall schedule any inspections required pursuant to (b) above so that the inspections occur within 20 business days of the local health agency's receipt of a completed application and supporting documentation.

8:6-3.3 Local health agency review of application; issuance of initial registration

(a) In determining whether to register a proposed exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59, a local health agency to which an initial application for registration is made pursuant to N.J.A.C. 8:6-3.1 shall review the application, the supporting documentation submitted pursuant to N.J.A.C. 8:6-3.1, the information the local health agency receives pursuant to N.J.A.C. 8:6-3.2(a), and the results of any inspections conducted pursuant to N.J.A.C. 8:6-3.2(b).

1. In addition, the local health agency shall consider any applicable local ordinance that provides restrictions on or prohibitions against smoking equivalent to or greater than those provided under the Act and this chapter, in accordance with N.J.S.A. 26:3D-63.

(b) The local health agency shall grant an initial application for registration of a proposed exempt cigar bar or cigar lounge if the local health agency determines that:

1. The proposed exempt cigar bar or cigar lounge has not expanded in size since December 31, 2004, to the date of the application;

2. The proposed exempt cigar bar or cigar lounge has not changed its location since December 31, 2004, to the date of the application;

3. The proposed exempt cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, excluding sales from vending machines, for the calendar year ending December 31, 2004, and for each succeeding calendar year ending December 31 of the year preceding the date of the application;

4. If the proposed exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act:

i. The proposed exempt cigar bar or cigar lounge is in an area within the establishment that is enclosed by:

(1) Solid walls or windows;

(2) A ceiling; and

(3) A solid door; and

ii. The ventilation system of the proposed exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas; and

5. There is no applicable local ordinance pursuant to (a)¹ above that prohibits granting the application for registration.

(c) If the local health agency finds that a proposed exempt cigar bar or cigar lounge meets the conditions for registration in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed application and any required supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.2(b), shall:

1. Issue a written notice to the applicant advising the applicant of the approval of the request for registration; and
2. Place a notice of registration of the exempt cigar bar or cigar lounge on file in the official records of the local board of health with jurisdiction over the municipality in which the exempt cigar bar or cigar lounge is located.

(d) The registration of an exempt cigar bar or cigar lounge shall expire on June 30 of the year following the year of issuance.

(e) If the local health agency finds that a proposed exempt cigar bar or cigar lounge fails to meet the conditions for registration in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed application and any supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.2(b), shall issue a written notice to the applicant advising the applicant as to the basis or bases for denial.

8:6-3.4 Procedure for renewal of registration

(a) A person having control of an establishment seeking to renew the registration of an exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59 shall submit the following, subject to (b) below, as applicable, to the local health agency with jurisdiction over the municipality in which the proposed exempt cigar bar or cigar lounge is located by no later than April 15 of the year in which the existing registration is to expire:

1. The completed registration renewal application form provided at Appendix B, incorporated herein by reference;
2. A copy of the deed or lease for the premises at which a proposed exempt cigar bar or cigar lounge is located held by the applicant or its predecessors in title or leasehold showing the occupancy of the premises as a cigar bar or cigar lounge from the date of the last registration renewal to the date of the application.
3. A copy of the certificate of occupancy for the premises from the date of the last registration renewal to the date of the application, to the extent the issuance of a certificate of occupancy was a condition of occupancy pursuant to local law during the period since the date of the last registration renewal; and
4. The sworn and notarized affidavit of a New Jersey licensed certified public accountant attesting that the exempt cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the

rental of on-site humidors, excluding sales from vending machines, during the calendar year ending December 31 of the year preceding the date of the registration renewal application.

i. The information contained in the affidavit required pursuant to paragraph 4 above shall be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury.

(b) If the proposed exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act, the applicant shall submit, in addition to information required pursuant to (a) above:

1. The applicant's sworn and notarized statement in the appropriate location on the registration renewal application form that there has been no modification to the enclosure, ventilation system, or location of cigar bar or cigar lounge since the date of the last registration; and/or

2. If there has been any modification to the enclosure or ventilation system of the exempt cigar bar or cigar lounge, the sworn and notarized affidavit of a New Jersey design professional attesting that, with respect to any modification to the enclosure or ventilation system to occurring since the date of the last registration, the ventilation system of the exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the

establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas, and the exempt cigar bar or cigar lounge remains in an area within the location that is enclosed by:

- i. Solid walls or windows;
- ii. A ceiling; and
- iii. A solid door.

8:6-3.5 Local health agency conferral with permit entity as to changes since initial registration

(a) A local health agency to which an application for renewal of the registration of an exempt cigar bar or cigar lounge has been made shall confer with the local construction code enforcing agency with jurisdiction over the municipality in which the exempt cigar bar or cigar lounge is located to ascertain whether the exempt cigar bar or cigar lounge has expanded in size during the period beginning on the date of the last registration to the date of the application.

(b) Upon reviewing an application for renewal of the registration of an exempt cigar bar or cigar lounge, any supporting documentation, and the information the local health agency receives pursuant to (a) above, the local health agency may require the applicant to provide the local health agency, and, at the option of the local health agency, any experts retained

by, and at the expense of, the local health agency, access to inspect one or more of the following, at no cost to the applicant:

1. The physical configuration of the establishment at which the proposed exempt cigar bar or cigar lounge is located;
2. The ventilation systems at the establishment; and
3. Records of sales of tobacco products and/or rentals of on-site humidors occurring at the establishment for the periods addressed in the application.

(c) The local health agency shall schedule any inspections required pursuant to (b) above so that the inspections occur within 20 business days of the local health agency's receipt of a completed application and supporting documentation.

8:6-3.6 Local health agency review of registration renewal application; issuance of registration renewal

(a) In determining whether to renew the registration of an exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59, a local health agency to which a registration renewal application is made pursuant to N.J.A.C. 8:6-3.4 shall review the application, the supporting documentation submitted pursuant to N.J.A.C. 8:6-3.4, the information the local health agency receives pursuant to N.J.A.C. 8:6-3.5(a), and the results of any inspections conducted pursuant to N.J.A.C. 8:6-3.5(b).

1. In addition, the local health agency shall consider any applicable local ordinance that provides restrictions on or prohibitions against smoking equivalent to or greater than those provided under the Act and this chapter, in accordance with N.J.S.A. 26:3D-63.

(b) The local health agency shall renew the registration of an exempt cigar bar or cigar lounge if the local health agency determines that:

1. The exempt cigar bar or cigar lounge has not expanded in size since the last registration to the date of the application;

2. The exempt cigar bar or cigar lounge has not changed its location since the last registration to the date of the application;

3. Sales of tobacco products and/or rentals of on-site humidors at the location of the exempt cigar bar or cigar lounge totaled at least 15 percent or more of the total annual gross income of the proposed exempt cigar bar or cigar lounge, excluding sales from vending machines, during the calendar year ending December 31 preceding the date of the registration renewal application; and

4. If the exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act:

i. The exempt cigar bar or cigar lounge is in an area within the establishment that is enclosed by:

(1) Solid walls or windows;

(2) A ceiling; and

(3) A solid door; and

ii. The ventilation system of the exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas; and

5. There is no applicable local ordinance pursuant to (a)¹ above that prohibits renewing the application for registration.

(c) If the local health agency finds that an exempt cigar bar or cigar lounge meets the conditions for registration renewal in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed application and any required supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.5(b), shall:

1. Issue a written notice to the applicant advising the applicant of the approval of the request for registration renewal; and

2. Place a notice of registration renewal of the exempt cigar bar or cigar lounge on file in the official records of the local board of health with jurisdiction over the municipality in which the exempt cigar bar or cigar lounge is located.

(d) If the local health agency finds that an exempt cigar bar or cigar lounge fails to meet any of the conditions for registration renewal in (b)

above, the local health agency, within 20 business days of the local health agency's receipt of a completed registration renewal application and any supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.2(b), shall issue a written notice to the applicant advising the applicant as to the basis or bases for denial.

8:6-3.7 Maintenance of enclosure

(a) An exempt cigar bar or cigar lounge registered pursuant to this subchapter and N.J.S.A. 26:3D-59 that is located within an establishment at which smoking is prohibited pursuant to the Act shall ensure that:

1. The solid door of the cigar bar or cigar lounge remains closed at all times except when the door is in use for entry to and egress from the cigar bar or cigar lounge;
 - i. The use of a self-closing door is recommended for this purpose; and
2. The ventilation system of the cigar bar or cigar lounge at all times is maintained in operable condition to ensure that air from the cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment and not recirculated to the nonsmoking areas, and that smoke is not backstreamed into the nonsmoking areas.

SUBCHAPTER 4. TOBACCO RETAIL ESTABLISHMENT

8:6-4.1 Annual provision of notice of claim of exemption and retail sale income verification

(a) An establishment that is an indoor public place or a workplace that intends to claim that the establishment is exempt from the Act as a tobacco retail establishment within the meaning of N.J.S.A. 26:3D-57 and 59 shall file, by April 15 of each year, the form of notice provided at Appendix C, incorporated herein by reference, with the local health agency with jurisdiction over the municipality in which the establishment is located.

1. The information contained in the notice required pursuant to (a) above shall be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury.

8:6-4.2 Exemption not applicable in certain circumstances

(a) With respect to an establishment that otherwise qualifies as a tobacco retail establishment, if the establishment is within or part of an indoor public place or a workplace, such as a retail store within a shopping mall, the exemption provided at N.J.S.A. 26:3D-59b shall not apply to the establishment unless the establishment is enclosed by solid walls or windows, a ceiling, and a solid door, and equipped with a ventilation system that is separately exhausted from the indoor public place or workplace in which the tobacco retail establishment is located, so that air

from the tobacco retail establishment is not recirculated to the indoor public place or workplace and smoke is not backstreamed into the indoor public place or workplace, and provided that:

1. The solid door of the tobacco retail establishment remains closed at all times except when the door is in use for entry to and egress from the tobacco retail establishment;

- i. The use of a self-closing door is recommended for this purpose; and

2. The ventilation system of the tobacco retail establishment at all times is maintained in operable condition to ensure that air from the tobacco retail establishment is separately exhausted from and not recirculated to the nonsmoking areas of the indoor public place or workplace in which the tobacco retail establishment is located, and that smoke is not backstreamed into the nonsmoking areas.

- (b) The exemption provided at N.J.S.A. 26:3D-59b is not available to the extent an applicable local ordinance restricts or prohibits its availability, in accordance with N.J.S.A. 26:3D-63.

SUBCHAPTER 5. CASINOS AND CASINO SIMULCASTING FACILITIES

8:6-5.1 Area within the perimeter of a casino or a casino simulcasting facility

(a) Establishments that are completely surrounded by a casino that meets the requirements of N.J.S.A. 26:3D-59e(1) are within the perimeter of a casino for the purpose of the exemption the Act affords casinos pursuant to N.J.S.A. 26:3D-59e.

1. The perimeter of a casino is the casino boundary delineation on the floor plan a casino licensee files with the Commission as part of its operation certificate pursuant to N.J.A.C. 19:43-7.3(b)1, subject to Commission approval.

2. For an establishment to be “completely surrounded” by a casino, a casino shall exist on all sides of, that is, in a 360-degree radius around, the establishment, provided the casino meets the requirements of N.J.S.A. 26:3D-59e(1).

(b) Establishments that are completely surrounded by a casino simulcasting facility that meets the requirements of N.J.S.A. 26:3D-59e(2) are within the perimeter of a casino simulcasting facility for the purpose of the exemption the Act affords casino simulcasting facilities pursuant to N.J.S.A. 26:3D-59e.

1. The perimeter of a casino simulcasting facility is the casino simulcasting facility boundary delineation on the floor plan a casino licensee files with the Commission as part of its operation

certificate pursuant to N.J.A.C. 19:43-7.3(b)1, subject to Commission approval.

2. For an establishment to be “completely surrounded” by a casino simulcasting facility, a casino simulcasting facility shall exist on all sides of, that is, in a 360-degree radius around, the establishment, provided the casino simulcasting facility meets the requirements of N.J.S.A. 26:3D-59e(2).

8:6-5.2 Temporary expansion of casino or a casino simulcasting facility

If a casino hotel obtains a Commission-approved resolution authorizing the amendment of the casino hotel’s operation certificate for the temporary expansion of a casino or a casino simulcasting facility, the temporarily expanded space is not a “casino” or a “casino simulcasting facility” for the purpose of the exemption the Act affords casino and casino simulcasting facilities pursuant to N.J.S.A. 26:3D-59e.

8:6-5.3 Designation of smoking and non-smoking areas

(a) Casino licensees shall place signage indicating that smoking is permitted at each entrance to an area at which smoking is permitted from an area at which smoking is not permitted.

(b) Casino licensees shall place signage indicating that smoking is not permitted at each entrance to an area at which smoking is not permitted from an area at which smoking is permitted.

(c) The signage a casino licensee uses to implement this section shall meet the technical requirements provided at N.J.S.A. 26:3D-61.

SUBCHAPTER 6. SIGNAGE DESIGNATING SMOKING AND NONSMOKING AREAS

8:6-6.1 Acceptable forms of signage designating smoking and nonsmoking areas

(a) Signs containing the content provided at Appendices D or E, incorporated herein by reference, are acceptable to meet the content requirement for the signs N.J.S.A. 26:3D-61 requires a person having control of an indoor public place or workplace at which smoking is prohibited pursuant to the Act to post at every public entrance to the indoor public place or workplace indicating that smoking is prohibited.

(b) Signs containing the content provided at either Appendix F or G, incorporated herein by reference, are acceptable to meet the content requirement for the signs N.J.S.A. 26:3D-61 requires a person having control of an indoor public place or workplace at which smoking is permitted pursuant to the Act to post in those areas of the indoor public place or workplace at which smoking is permitted.

(c) This section shall not be construed to prohibit a person having control of an establishment required to post signage pursuant to the Act to post another form of the required signs, provided the signs meet the requirements of N.J.S.A. 26:3D-61.

SUBCHAPTER 7. SCHOOL BUILDINGS AND GROUNDS

8:6-7.1 Purpose

The purpose of this subchapter is to implement the prohibition against smoking in school buildings and on school grounds pursuant to N.J.S.A. 26:3D-58.

8:6-7.2 Smoking prohibited in school buildings and on school grounds

(a) Pursuant to N.J.S.A. 26:3D-58b, smoking is prohibited in school buildings and on school grounds.

(b) As used in (a) above, “school buildings” and “school grounds,” means and includes, with respect to public and nonpublic elementary and secondary schools:

1. Land, portions of land, structures, buildings, and vehicles, owned, operated or used for the provision of academic or extracurricular programs sponsored by a school or a community provider and structures that support these buildings, such as school wastewater treatment facilities, generating facilities, and other central service facilities including, but not limited to, kitchens and maintenance shops;

2. Athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non-instructional or non-educational

purposes, and any structure, building or facility used solely for school administration;

3. Playgrounds, and recreational places owned by local municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion of such land; and

4. Certain faculty or administrator residences on school grounds as provided in N.J.A.C. 8:6-8.1(b).

SUBCHAPTER 8. RESIDENCES

8:6-8.1 Certain residences not exempt

(a) A rectory or a convent is a private residence at which smoking is permitted for the purpose of the exemption the Act affords private residences pursuant to N.J.S.A. 26:3D-59d, unless the rectory or convent is:

1. Used in whole or in part as a workplace of the parish or diocese by employees or volunteers of the parish or diocese other than those who reside there (for example, for the performance of clerical work in an office area); or

2. Generally accessible to the public (for example, for meeting or counseling purposes).

(b) A faculty or administrator residence on school grounds is a private residence at which smoking is permitted for the purpose of the

exemption the Act affords private residences pursuant to N.J.S.A. 26:3D-59d, unless the residence is:

1. Used in whole or in part as a workplace of the school by persons other than those who reside there (for example, a place at which school personnel are required to perform secretarial, security, maintenance, or housekeeping work);
2. Generally accessible to the public;
3. Used by students (for example, for tutoring, counseling, or extracurricular purposes); or
4. Located within a student dormitory.

(d) This section is not to be construed to prevent a parish, diocese, or school from prohibiting smoking in residences under their jurisdiction and control, in accordance with N.J.S.A. 26:3D-63.

SUBCHAPTER 9. ENFORCEMENT

8:6-9.1 Enforcement against individuals

(a) A person having control of an indoor public place or workplace shall order a person smoking in violation of the Act and this chapter (“person smoking illegally”) to comply with the Act and this chapter, and may elect to provide the person smoking illegally with a copy of the notice provided at Appendix H, incorporated herein by reference.

(b) If, after having been ordered to comply with the Act and this chapter in accordance with (a) above, a person smoking illegally continues

to violate the Act and this chapter, the person having control of the indoor public place or workplace:

1. Shall order the departure and removal from the indoor public place or workplace of the person smoking illegally; and
2. In the discretion of the person having control of the indoor public place or workplace, may request the assistance of law enforcement or peace officers with jurisdiction over the indoor public place or workplace to accomplish this departure and removal.

(c) A person may file a complaint against a person smoking illegally in accordance with N.J.S.A. 26:3D-62 by:

1. Contacting the local health agency with jurisdiction over the indoor public place or workplace and by adhering to complaint procedures each local health agency shall establish;
2. Filing a complaint directly with the municipal court with jurisdiction over the establishment, or
2. Filing the form of complaint at Appendix I, incorporated herein by reference, with the Indoor Environments Program.

(d) This section shall not be construed to impair the ability of law enforcement or peace officers with jurisdiction to charge a person under any other applicable law, including N.J.S.A. 2C:33-13.

8:6-9.2 Enforcement against person having control of an indoor public place or workplace

(a) Any person may file a complaint against a person having control of an indoor public place or workplace who violates or fails or refuses to comply with or enforce the Act and this chapter by:

1. Contacting the local health agency with jurisdiction over the indoor public place or workplace and by adhering to complaint procedures each local health agency shall establish;
2. Filing a complaint directly with the municipal court with jurisdiction over the establishment, or
3. Filing the form of complaint at Appendix I with the Indoor Environments Program.

8:6-9.3 Procedure for anonymous request for investigation

(a) A person may submit an anonymous request for the performance of an investigation of an indoor public place or workplace for alleged violation of, or failure or refusal to comply with or enforce, the Act and this chapter by:

1. Contacting the local health agency with jurisdiction over the indoor public place or workplace and by adhering to anonymous investigation request procedures each local health agency shall establish; or

2. Filing the form of request for investigation at Appendix J incorporated herein by reference, with the Indoor Environments Program.

(b) An anonymous request for investigation shall not be evidence of a violation of, or a failure or refusal to comply with or enforce, the Act and this chapter.

8:6-9.4 Entry upon premises by enforcing entity

(a) A person having control of an establishment shall permit full access to the establishment, for the purposes of examination, inspection, investigation, and enforcement of the Act and this chapter, to:

1. Representatives of a local health agency with jurisdiction over the establishment;
2. Representatives of the Department; and
3. Any experts retained by, and at the expense of, the local health agency of the Indoor Environments Program.

8:6-9.5 Fines for violations

(a) Pursuant to N.J.S.A. 26:3D-62, fines for violations of the Act and this chapter are as follows:

1. \$250 for a first offense;
2. \$500 for a second offense; and
3. \$1,000 for each subsequent offense.

SUBCHAPTER 10. FORMS

8:6-10.1 Forms

Single copies suitable for photocopying of the forms provided at Appendices A through J are available upon request to the Indoor Environments Program and are available for download from the Forms internet web page of the Department at <http://web.doh.state.nj.us/forms>.